



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Networks Electronic Corporation

File: B-230809

Date: July 25, 1988

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### DIGEST

Allegation that source approval testing is unavailable and thus should be waived for protester is untimely, and will not be considered, where solicitation clearly called for source approval, but protest was not filed until after deadline for receipt of proposals; Bid Protest Regulations require that alleged solicitation deficiencies be protested prior to proposal submission deadline.

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### DECISION

Networks Electronic Corporation, U.S. Bearing Division (NEC), protests the award of a contract to New Hampshire Ball Bearings (NHBB) under request for proposals (RFP) No. DLA500-88-R-0086, issued by the Defense Logistics Agency (DLA), for 6,450 bearings, plain, self-aligning. The bearings, for use in F4E aircraft engines, are considered to have critical application and, thus, the RFP provided that items from other than General Electric Company (GE), the original equipment manufacturer, would not be used without prior GE testing and approval. NEC argues that it improperly was found not to have met the source approval requirement. We dismiss the protest.

In the planning stages of this procurement, the contracting officer noted that NEC previously had supplied this item (NEC's part No. 5008M45P8 was referenced on the item drawing), but in the period September through October 1987, after repeated contacts with General Electric Company (GE), the original equipment manufacturer, was unable to confirm whether NEC was an approved source. In October, DLA's technical staff finally advised that, based on discussions with GE, NEC had not had its bearing tested by GE, was not listed in the "Using Services Manual" as an approved source, and had its part number cited on the drawing only because the firm was considered capable of manufacturing the bearing. Based on this information, the contracting officer wrote the solicitation to require only the part numbers of the three known approved sources--that is, part Nos.

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5008M45P5, 5008M45P6, and 5008M45P7--and did not include NEC's part No. 5008M45P8 on the basis that the firm had not previously supplied the part as an approved source.

The solicitation was issued on November 30, 1987, with a December 30 closing date for receipt of initial offers. Three offers were received, including one from NEC, which was low as to price. NEC's proposal offered the firm's own part (i.e., No. 5008M45P8), which did not conform to the RFP requirement for an approved source part. Instead of rejecting the proposal out of hand, however, the agency submitted NEC's technical data package to DLA engineers for evaluation as an alternate proposal. On January 27, 1988, the engineers advised the contracting officer that the evaluation of NEC's data package would not be completed for approximately 6 months. Deciding that such a delay would be untenable, on February 5 the contracting officer rejected NEC's proposal and, on February 7, made an award to the second low offeror.

In its original protest, NEC argued that its proposal to provide its own part No. 5008M45P8 should not have been evaluated as an alternate proposal, because NEC was in fact an approved source, as indicated by its listing on the GE drawing for the item. In its comments on the agency report, however, NEC concedes that its bearing never has been tested by GE, and therefore is unapproved. NEC also alleges for the first time that it is unable to get GE approval for its bearing, since it has been informed by GE that it no longer produces the engine on which the bearing is used, and will not test and approve parts for engines no longer in production, although the end-user has the option of doing so. NEC states that it was never notified by the government of its unapproved status, and asserts that it reasonably assumed from prior federal procurements, under which it supplied its bearings, that its part was acceptable.

NEC's contention that it cannot obtain GE approval of its product essentially is an argument that the approved source requirement should be waived for the firm. This argument is untimely raised. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988), protests based on alleged solicitation improprieties must be filed prior to the deadline for submitting proposals. Here, if NEC believed the approved source requirement was improper for any reason, including NEC's apparent inability to qualify as an approved source, NEC was required to protest on this basis to DLA or to our Office prior to the December 30 closing date. NEC's assertion that it was unaware of its unapproved status is belied by its own statements that it held discussions with GE to arrange for approval testing. Further, while the GE drawing for the part does list NEC's part, it also states

under Note 2 that "only the items both listed on the approved product parts list and identified on this drawing have been tested and approved by the General Electric Co." Since NEC knew its part had not been tested and approved by GE, the mere listing of its part on the drawing should not have misled NEC into believing it was an approved source.

Finally, even if NEC's argument were otherwise timely, we will not consider allegations raised for the first time in comments on an agency report when they could have been raised in the initial protest. Blackeye Pacific Corp., B-229582.9, Mar. 21, 1988, 88-1 CPD ¶ 292.

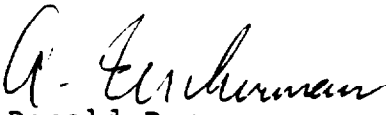
We add that, even if GE approval testing was unavailable to NEC for the reasons alleged, the agency took reasonable action in considering NEC's technical data package under an alternate approval method. There is no allegation or evidence that DLA's conclusions regarding the amount of time necessary to test NEC's parts were improper. (DLA reports that it is continuing its evaluation of NEC's part for approval on future acquisitions.)

Regarding NEC's claim that it has provided its bearing to DLA under other contracts, DLA has acknowledged the fact, but states that it accepted NEC's part erroneously. Acceptance of the part under a prior procurement did result in approval for that contract, but it is the position of DLA's technical staff that, for this critical part, approval by the original equipment manufacturer (or, presumably, if the protester is correct that GE testing no longer is available, approval by some substitute central technical authority) is essential before the part can be accepted. This position appears to be consistent with the Defense Acquisition Regulation, Supplement 6-201.2 ("DOD Replenishment Parts Breakout Program). Again, if NEC believed otherwise, it should have so protested prior to the proposal submission deadline.

Finally, NEC protests the agency's delay in notifying it of the award which, it claims, made it difficult to file a timely protest. The untimeliness of NEC's protest, however, is unrelated to the award notice, since we have found that NEC's argument should have been raised prior to the proposal submission deadline. Thus, the delay by DLA is merely a

procedural deficiency that does not affect the validity of the otherwise proper award. See American Indian Business & Technologies Corp., B-224476, July 23, 1986, 86-2 CPD ¶ 101.

The protest is dismissed.

*for*   
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